IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.233 OF 2005

Rajindersingh Bhatia & Ors. .. Appellants

vs.

Mukesh B. Patel .. Respondent.

Mr.G.S.Godbole, for the Appellant.

Mr.M.S.Menon with Vipin Mishra for the Respondent.

CORAM : A.S.OKA, J.

DATED : 5th April, 2005.

P.C. :

1. The Appeal is preferred by the Original Defendants challenging the judgment and order dated 19.1.2005 passed by the learned Trial Judge in Notice of Motion No.1645 of 2004.

2. By order dated 16.12.2003 passed by the learned Single Judge of this Court in Appeal from Order No. 902 of 2003 and other connected appeals, this Court confirmed the appointment of Court Receiver made by the trial Court. This Court also noted that as per the order passed by the trial Court, Agency Agreement has been already executed in favour of the Original Plaintiff. Certain

directions were given by this Court regarding fixing the terms and conditions of the appointment of the Original Plaintiff as an agent. The case made out by the Appellant Defendants in the Notice of Motion No. 1645 of 2004 is that the Original Plaintiff is committing default in payment of royalty. The prayer was therefore made in the Notice of Motion for a direction to the Court Receiver to take possesion of the suit premises from the Original Plaintiff.

3. By the impugned Judgment and Order, the learned trial Judge held that there was no serious violation on the part of the Original Plaintiff of the terms and conditions of the agency agreement.

4. Shri Godbole appearing for the Appellant Defendants has placed reliance on a statement of accounts. Shri Godbole pointed out thatrepeatedly there is a default on the part of the Original Plaintiff. He pointed out that 6% commission payable to the Court Receiver and the royalty amount is not paid by the Original Plaintiff.

5. The learned Counsel appearing for the Original Plaintiff on instructions stated that on

30.3.2005 royalty payable upto the end of March 2005 has been deposited with the Court Receiver. He states that the commission payable to the Receiver will be deposited by the Original Plaintiff within a period of two weeks from today. The learned Counsel pointed out that by order dated 16.12.2003, this Court directed the learned Trial Judge to hear and decide the suit within a period of One and half year and accordingly the recording of evidence has already been commenced.

6. The statements made by the learned Counsel appearing for the Original Plaintiff made on instructions of the Original Plaintiff are accepted. In view of the said statements and in view of the fact that now recording of evidence has already started, no case is made out for interference with the impugned judgment and order.

7. Needless to say that the Original Plaintiff must comply with the terms and conditions of the Agency Agreement and must pay other charges payable to the Court Receiver.

8. Subject to what is stated above, the Appeal from Order is disposed of with no order as to costs.

(A.S.Oka, J.)